

05 FEB 1995

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: VERMONT

Liens and Adjustments or Recoveries

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1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

N/A--liens are not placed on property.

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR § 433.36(f):

A signed and dated written statement is accepted as documentation and verification of the facts in the case.

3. The State defines the terms below as follows:

- estate

An estate shall include all real and personal property and other assets which are included in the estate when it is filed in the probate court.

- individual's home

A home includes contiguous land and any other buildings located on the land.

- equity interest in the home

Equity value is the price the home can be reasonably expected to sell for on the local open market minus any encumbrances. In the case of shared ownership, only the applicant's/recipient's share is his/her interest in the home.

- residing in the home for at least one or two years on a continuous basis, and  
An individual has been continuously residing in a home if he/she has had no other legal or mailing address during the period of time.

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- lawfully residing.

An individual is lawfully residing in a home if the home is his/her legal residence.

4. The State defines undue hardship as follows:

Undue hardship exists when any of the following conditions are met:

- A. A sibling has been living in the home for at least one year immediately before (and on a continuous basis since) the date of the individual's admission to long-term care.
- B. A son or daughter has been living in the home for at least two years immediately before (and on a continuous basis since) the date of the individual's admission to long-term care and establishes to the Department's satisfaction that he or she provided care to the individual which permitted the individual to reside at home rather than in a long-term care living arrangement.
- C. One or more siblings or direct descendants of the deceased person (lineal heir(s), such as children and grandchildren) will inherit the homestead of the deceased Medicaid recipient, provided that the conditions in either subsection (1) or (2) are met.

(1) Each sibling or lineal heir inheriting the homestead has family income below 300 percent of the federal poverty level; or

"Family" means that the department will consider each heir separately. Heirs will not be aggregated into one family unless the heirs are minor children who are siblings. In the case of an adult heir, his or her family will be limited to the heir, the heir's spouse, the heir's minor (younger than 18) children, and the spouse's minor children residing in the household. In the case of an heir who is a minor, the heir's family will be the heir, his or her parent(s) or stepparent residing in the household, and the heir's minor siblings residing in the household, including half-, step-, and adoptive siblings.

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"300 percent of the federal poverty level" is a gross income test; no exclusions or deductions are allowed.

(2) The sibling(s) or lineal heir(s) inheriting the homestead can demonstrate that significant services or financial support they provided to the deceased Medicaid recipient delayed or avoided the decedent's placement in a nursing home. "Significant" means when the deceased Medicaid recipient's admission to a nursing home was delayed by at least six months, or avoided entirely, as a result of either:

(a) Medical or remedial care or support services that was:

- i) medically necessary,
- ii) provided directly by one or more of the lineal heirs or siblings, or their spouses, without compensation, or purchased with their own funds, and
- iii) provided while the person required medical care and services consistent with the level of care standard for level III residential care homes at a frequency averaging no fewer than three times per week or, if provided less frequently, constituting the equivalent expenditure of time or money.

Such services may have been provided in combination with services provided by governmental or other private entities. If the care or services provided or purchased were in addition to those the deceased person received from governmental or private sources (and were paid for by other sources), then the care or services provided or purchased must have been medically necessary.

or

(b) Other services or financial support that was of equal or greater significance as the care or services described in criterion (a) above.

When there are multiple heirs and not all heirs qualify for the hardship waiver, only that percentage of the homestead that corresponds to the qualifying heir or heirs' share of the homestead will be exempt from Medicaid recovery.

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D. The assets were treated as a transfer of assets and the assigned penalty period for the transfer was served.

E. The funds can be recovered from the estate only if assets are sold, and these assets are the sole source of income for the individual's immediate family.

NOTE: Such income-producing assets include a family farm or other family business. Immediate family is defined as spouse, parents, children or siblings.

F. The sale of the income-producing assets would result in the immediate family seeking public assistance.

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective.

Recovery is waived when it would cause undue hardship (see above). Recovery is waived as being not cost-effective in cases where the estate consists only of personal property, such as home furnishings, apparel, personal effects and household goods, which do not exceed \$2,000 in value, based on information filed with the probate court.

6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

Recovery is considered cost-effective in cases where the estate includes liquid resources, such as cash, bank accounts, stocks, bonds, Certificates of Deposit, IRAs, or real property. There is no minimum threshold, excepted that described in #5.

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

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- A. All applicants for long-term care Medicaid are advised in writing about the Department's estate recovery policy at the time of application, via the DSW 204REC form. This form outlines the circumstances under which the Department will file a claim, describes what constitutes undue hardship, and specifies which Medicaid payments the Department will seek to recover.
- B. The Probate Courts report all estate openings to the Department. A claim is then filed against the estate of any deceased individual who was a Medicaid recipient meeting the criteria for estate recovery. Notice is given to both the administrator and the Probate Court, and includes a copy of the Department's regulations on estate recovery and instructions for requesting a hardship waiver.
- C. If a waiver is requested and denied, the administrator is notified in writing and provided with information on appeals procedures.
- D. If the Department is advised that the estate consists only of personal property as described in #5, collection is waived as not cost-effective.

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